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Law

**OFF-DUTY EMPLOYMENT AND OFF-DUTY
BUSINESS ACTIVITY**

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This instruction implements DoD 5500.7-R, Joint Ethics Regulation (JER), Sections 2-206a and 3-303a and DoD Directive 5500.7, Standards of Conduct. It is applicable to all military and civilian personnel assigned to the 11th Wing. This instruction applies to members of the Air Force Reserve while they are on active duty orders in excess of thirty (30) consecutive days. It establishes 11th Wing policy that all military personnel and certain designated civilian personnel must obtain prior approval of off-duty employment or off-duty business activity. Military personnel who fail to comply with the specific prohibitions and requirements contained in paragraphs **3.1**, **3.2**, **5.1**, or **5.4** violate a lawful general order, which may result in disciplinary action or prosecution under Article 92, Uniform Code of Military Justice (UCMJ). Air Force civilian employees who fail to comply with specific prohibitions and requirements contained in paragraphs **2.1**, **4**, **5.1**, or **5.4** may be subject to disciplinary action without regard to criminal liability.

SUMMARY OF REVISIONS

This document is substantially revised and must be completely reviewed.

This revision clarifies the regulatory authority for the instruction and explains the possible adverse actions that may result from violations of its provisions. It specifies off-duty employment and off-duty business activity prohibitions (paragraph **2.1**), provides additional instructions for military members and designated civilians on how to obtain approval for off-duty employment and off-duty business activity (paragraph **5**). It affirms the applicability of this instruction to all military personnel and civilian employees during all periods of Department of Defense (DoD) employment (paragraph **1.2**). Finally, it defines the terms “off-duty employment”, “off-duty business activity”, “self-employment” and “readiness” for purposes of the instruction.

1. General Information and Definitions:

1.1. The Joint Ethics Regulation (JER), DoD 5500.7-R, delegates commanders, heads of organizations, supervisors and agency designees the authority to require Department of Defense (DoD) employees under their jurisdiction to report and obtain approval for off-duty employment or off-duty business activity prior to engaging in such employment or business activity and to prohibit off-duty employment or off-duty business activity that contravenes this instruction.

1.2. This instruction applies during all periods of employment with the Department of Defense, including when employees are on annual, sick or terminal leave.

1.3. "Off-duty employment" means compensated outside of DoD employment as well as off-duty business activity, including self-employment.

1.4. "Off-duty business activity" and "self-employment" mean the offering of goods and/or services to the general public for a fee or commission. It includes providing services to or conducting financial/real estate transactions on behalf of paying clients. This includes the sale of insurance, stocks, mutual funds, real estate, etc., as well as selling consumer items or services such as collectibles, cosmetics, household supplies, vitamins, telephone service, pre-paid legal services and other goods. A few examples of what is not considered "off-duty business activity" or "self-employment" are the investment of personal funds in stocks or real estate, garage sales or occasionally babysitting for friends or relatives.

1.5. "Readiness" means the ability of the Air Force to perform its mission in the manner and at the time and place required, and the ability of a military member or civilian employee to perform his or her government duties in the manner and at the time and place required.

2. Prohibited Off-Duty Employment and Off-Duty Business Activity

2.1. Military and civilian personnel assigned to the 11th Wing may not engage in off-duty employment or off-duty business activity that is prohibited by statute or regulation (including the Joint Ethics Regulation, DoD 5500.7-R); that interferes with or is incompatible with the performance of their Air Force duties; that creates a conflict of interest or leads to the appearance of a conflict of interest between their Air Force duties and their personal interests; that may reasonably be expected to bring discredit upon the Air Force or the Department of Defense; that involves an undue hazard that could jeopardize a military member's fitness for their Air Force duties; that detracts from readiness or that poses a security risk. Failure of personnel to obey this paragraph is a violation of Article 92, UCMJ. Failure of civilian employees to obey this paragraph may result in disciplinary action in accordance with AFI 36-704, *Discipline and Adverse Actions*, without regard to criminal liability.

3. Requirements for Military Personnel

3.1. All military personnel assigned to the 11th Wing, including Air Force Reserve personnel on active duty orders for more than thirty (30) consecutive days, who seek to engage in off-duty employment or off-duty business activity must obtain the approval of their unit commander prior to undertaking such off-duty employment or off-duty business activity. A Judge Advocate recommendation of approval for off-duty employment or off-duty business activity must be obtained from HQ 11 WG/JA, before the unit commander may grant approval for military members assigned to the 11th Wing to engage in off-duty employment or off-duty business activity. Failure of military personnel to obey the requirements of this paragraph is a violation of Article 92, UCMJ.

3.2. All military personnel seeking to engage in off-duty employment or off-duty business activity must also comply with any regulations or instructions applicable to their functional duties. For exam-

ple, medical service personnel must comply with the requirements regarding off-duty employment in AFI 44-102, *Community Health Management*, in addition to the requirements of this instruction. Judge Advocate personnel must comply with the requirements regarding off-duty employment in the Judge Advocate General of the Air Force Policy Letter, Number 14, in addition to the requirements of this instruction. The United States Air Force Band members must comply with the provisions of AFI 35-101, *Public Affairs Policies and Procedures*, paragraph 10.13. and 10 U.S. Code Section 8634, in addition to the requirements of this instruction. Failure of military personnel to obey the requirements of this paragraph is a violation of Article 92, UCMJ.

4. Requirements for Civilian Personnel

4.1. All civilian employees assigned to the 11th Wing are subject to the prohibitions of paragraph 2.1. of this instruction.

4.2. All civilian employees assigned to the 11th Wing who are required to file public or confidential financial disclosure reports (Office of Government Ethics, OGE Form 278 or OGE Form 450) who seek to engage in off-duty employment or off-duty business activity must comply with the requirements of Section 5 of this instruction. A Judge Advocate recommendation from HQ 11 WG/JA must be obtained on all applications processed under this paragraph. Failure of civilian employees to obey the requirements of this paragraph may result in disciplinary action in accordance with AFI 36-704, *Discipline and Adverse Actions*.

4.3. All civilian employees not otherwise covered by paragraph 4.2. who are subject to the collective bargaining agreement between the Commander, 11th Wing, and the American Federation of Government Employees (AFGE) Local 1092, AFL-CIO, must obtain supervisory approval whenever other employment during non-duty hours is accepted. This requirement is in accordance with Article 5, Section 7, Memorandum of Agreement Between the Commander, 11th Wing and the American Federation of Government Employees and Local 1092, AFL-CIO. Any outside employment which tends to impair the employee's physical capacity to perform official duties, or which creates the appearance of conflict of interest, will not be authorized. For employees subject to this paragraph, only Sections I and II of AF Form 3902 must be completed in accordance with paragraph 5.2. of this instruction. No legal review is required. Failure of civilian employees to obey the requirements and prohibitions of this paragraph may result in disciplinary action in accordance with AFI 36-704, *Discipline and Adverse Actions*.

5. Responsibilities:

5.1. Time Requirements. Approval of off-duty employment or off-duty business activity must be obtained by all military personnel and civilian employees subject to paragraph 4.2., at least 2 weeks prior to beginning off-duty employment or engaging in the off-duty business activity. If it is not possible to obtain approval at least 2 weeks in advance, approval must be obtained as soon as possible. If individuals do not seek approval or their applications are disapproved, they must not accept the off-duty employment. Failure of military personnel to obey the requirements of this paragraph is a violation of Article 92, UCMJ. Failure of civilian employees to obey the requirements of this paragraph may result in disciplinary action in accordance with AFI 36-704, *Discipline and Adverse Actions*.

5.2. Processing Applications. To apply for approval of off-duty employment or off-duty business activity, the member/civilian employee completes Section I, AF Form 3902, *Application and*

Approval for Off-Duty Employment, and forwards it to the member's/civilian employee's immediate supervisor.

5.2.1. The member or civilian employee's immediate supervisor will investigate each application to ensure that the proposed off-duty employment or off-duty business activity is consistent with this instruction, other Air Force Instructions and the Joint Ethics Regulation (DoD 5500.7-R). The supervisor completes Section II of Form 3902. For those members or civilian employees subject to paragraphs 3.1. and 4.2, the immediate supervisor will forward the AF Form 3902 to HQ 11 WG/JA to obtain a Judge Advocate recommendation in Section III.

5.2.2. HQ 11 WG/JA will provide a Judge Advocate recommendation in Section III of AF Form 3902 for all applications from military members subject to paragraph 3.1 and civilian employees subject to paragraph 4.2 who file Public Financial Disclosure or Confidential Financial Disclosure reports (OGE Form 278 or OGE Form 450). The AF Form 3902 will then be forwarded to the member or civilian employee's unit commander or the first person in the their chain of command or supervision who is a commissioned military officer or a civilian GS-12/WS-14 or above and who supervises the member or civilian employee's immediate supervisor.

5.2.3. The unit commander or second-level supervisor will investigate each application to ensure that the proposed off-duty employment or off-duty business activity is consistent with this instruction, other Air Force Instructions and the Joint Ethics Regulation. A Judge Advocate recommendation from HQ 11 WG/JA must be obtained on a Form 3902 from a DoD employee subject to paragraphs 3.1. or 4.2. before the unit commander or second-level supervisor may complete Section IV of AF Form 3902.

5.2.4. If the member or civilian employee's immediate supervisor is a General Officer, Senior Executive Service (SES) or SES-equivalent employee or Wing Commander (or equivalent), then the immediate supervisor is authorized to complete Section IV of the AF Form 3902.

5.3. When to File New 3902. A new AF Form 3902 must be submitted whenever the type of employment or the employer changes, if the individual's Air Force duties change significantly, or when the number of regularly scheduled off-duty hours increases. An occasional increase in hours due to situations such as the availability of overtime work, or the need to fill in for an absent coworker, do not require resubmission of an AF Form 3902. Previously denied requests may be resubmitted after a change in the individual's Air Force duties or a modification of the off-duty employment or off-duty business activity, such as a reduction in hours or change in nature of employment. Failure of military personnel to obey the requirements of this paragraph is a violation of Article 92, UCMJ. Failure of civilian employees to obey the requirements of this paragraph may result in disciplinary action in accordance with AFI 36-704, *Discipline and Adverse Actions*.

5.4. Records Disposition. After a request is approved or disapproved, the original request will be maintained in the individual's personal information file or civilian employee work file and maintained in accordance with AFMAN 37-139, *Records Disposition Schedule*, Table 36-1, Rules 6 and 7. Military members will be given a copy of the completed AF Form 3902.

5.4.1. Supervisors of civilian employees will document approved participation in off-duty employment or off-duty business activity on AF Form 971, *Supervisor's Record of Employee*, in accordance with AFI 36-703, *Civilian Conduct and Responsibility*, paragraph 5.7.

5.4.2. DoD employees (military and civilian) who are required to file public or confidential financial disclosure reports (OGE Form 278 or OGE Form 450) will be provided a copy of the com-

pleted AF Form 3902. Additionally, the unit commander will deliver a copy of the completed AF Form 3902 to HQ 11 WG/JA to be filed with the DoD employee's public or confidential financial disclosure report.

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Commander